
Widespread use of private email revealed a day after Wise resigns

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University of Illinois Chancellor Phyllis Wise conducted extensive university business on a private email account and failed to provide key documents in response to Freedom of Information Act requests, documents released by the university show.

The UI disclosed Friday that an ethics investigation revealed that certain administrative officials used personal email to conduct UI business and failed to turn over those documents as requested, a violation of university policy.

The findings came one day after Wise announced that she would step down as chancellor next week.

The more than 1,100 personal emails released by the university included many from Wise, but a university spokesman declined to say whether the ethics investigation led to her departure.

The emails had been the subject of 10 separate FOIA requests by eight separate individuals. The topics covered in the requests were Steven Salaita, James Kilgore and the Carle Illinois College of Medicine.

In several emails, Wise indicated she was trying deliberately to avoid FOIA disclosure by using her personal account — even though the UI instructs employees that personal emails about university business have to be examined for FOIA requests under university policy.

After the university learned about the personal emails, an official ethics inquiry was launched in late April by the University Counsel, University Ethics and Compliance and the external legal firm Jones Day, which was used to investigate inflated student profile data at the College of Law. The university paid Jones Day about \$175,000 for the inquiry, which covered 2014 and 2015.

"A desire to maintain confidentiality on certain sensitive University-related topics was one reason personal email accounts were used to communicate about these topics," the UI's release said. "Some emails suggested that individuals were encouraged to use personal email accounts for communicating on such topics."

Wise's 'shocking' behavior

In a March 19, 2014, email about the proposed College of Medicine, Wise wrote: "I may be getting paranoid, but since someone has FOIed all of the emails that (research park director) Laura Frerichs has exchanged between herself and the internal and external advisory board members with regards to the COM, I am using my personal email and sending it to (name redacted) personal email."

In a September 2014 email regarding the Steven Salaita lawsuit, Wise wrote that campus spokeswoman Robin Kaler "has warned me and others not to use email since we are now in litigation phase. We are doing virtually nothing over our Illinois email addresses. I am even being careful with this email address and deleting after sending."

"It is shocking that Chancellor Wise was not only using her private email to avoid transparency, but deleting emails subject to litigation," said Maria LaHood of the Center for Constitutional Rights, which is representing Salaita in his federal lawsuit against the UI.

A Champaign County judge recently ordered the university to turn over thousands of documents on the case to Salaita. Besides Wise, the documents included emails from personal accounts held by Provost Ilesanmi Adesida and Board of Trustees Chairman Edward McMillan, as well as other administrators and professors.

But UI spokesman Thomas Hardy declined to say which individuals had been targeted in the FOIA requests and failed to turn over documents.

Hardy said administrators conducted other university business on their personal accounts as well, but the emails released Friday were the ones relevant to the FOIA requests. He also said some of the emails in the documents released have been made public through previous FOIA requests, as they'd been forwarded to other accounts.

What led to this

The problem came to light when officials came across an email for a FOIA request that referred to someone's "other email" account, Hardy said.

"We were told by somebody with information that it appeared that some individuals may be using personal emails and not making them available for consideration and FOIA responses," he said.

When investigators began their work, they found that "reliance on personal emails was becoming active or more prevalent" in January and February 2014 regarding plans for the new College of Medicine, so they included both 2014 and 2015 in their inquiry, Hardy said.

At that time, emails show, Wise was contacting business leaders and politicians to build support for the proposal, which was not yet public.

Employees are not prohibited from using personal emails to discuss university business, Kaler said. But a power-point used in FOIA training instructs them that "using a non-university email account or phone for university business doesn't necessarily protect that information from FOIA."

"It doesn't matter where the documents are. They can be electronic on your personal email, they can be in the trunk of your car. You have to produce them. That's the rule," she said.

In another email exchange with Kaler, Wise asked whether the UI's "box," or file-sharing server, would protect documents from FOIA disclosure. Kaler said it would not, though she noted that it "does reduce the number of electronic copies floating around campus." She also said the documents in question were protected from FOIA because they were drafts, but at some point the final versions would be subject to disclosure.

"Obviously, it probably would be best if people could limit their emails as they relate to university matters to their university email," Hardy said. "What people have to understand is that if we get a FOIA request on a particular topic or issue," the university has to be sure that it is providing all documents responsive to that request, whether on a personal or UI email account.

The Illinois Freedom of Information Act defines public records, including electronic communications, as all documents "pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body."

It does not address whether that includes personal emails, and case law is unclear on the issue.

'Transparency and trust'

Hardy said The News-Gazette's lawsuit in *Madigan v. City of Champaign* could apply, but it does not directly answer whether personal emails by UI employees are subject to FOIA. In that lawsuit, the city was forced to release text messages by council members during council meetings because the council was acting as a public body when the messages were sent.

However, Esther Seitz, a media law attorney at Donald M. Craven P.C., which represented The News-Gazette in that case, said the ruling made clear that any correspondence by a public official about public business is a public record.

Hardy said he doesn't know whether there will be any more resignations as a result of the inquiry.

"That would be something that would be determined by the president and Board of Trustees," he said.

Wise, who is traveling, could not be reached for comment Thursday or Friday. In her resignation announcement, she said that "external issues" over the last 12 months had become a distraction from her work as chancellor.

"She was aware that this inquiry was under way, because it involved her emails, and she cooperated with the inquiry," Hardy said. "Was this one of the issues she referred to? I don't know."

As a response to the inquiry, the university revised its FOIA policy to ensure more transparency in the future, officials said. While UI policy already tells employees that personal email accounts are subject to FOIA, the FOIA officer added clearer, more specific language on the issue.

The UI ethics office also held in-person training for 30 senior officials attending the May 7 Board of Trustees meeting, and will require senior officials to confirm compliance annually. Reminders and group training sessions will also become more available.

"Today, we have released documents to fulfill any incomplete FOIA requests," President Timothy Killeen said in a statement. "I am fully committed to a strong culture of transparency and trust, and I expect all U of I employees will be as well."

'A little embarrassing'

Professor Nicholas Burbules, whose personal emails to Wise about the Salaita case were included in the batch released Friday, said it's "a little embarrassing" that communications he considered personal were being made public, but "I stand by everything that I said."

Burbules said he supports the open records law, but says the situation raises larger questions about what constitutes university business.

"I fully support transparency and the need for public deliberations about public policy issues at a public university," he said. "But there's clearly a line, and I think it's a blurry line, between the conduct of university business and personal communication from Person A to Person B that is about a university matter but which is an expression of an individual opinion or a question or a half-baked thought that is a conversation. It's about a university matter but it doesn't seem to me that that is the conduct of university business."

He fears a "chilling effect" on communications between faculty members and administrators.

"I think people will become less willing to exchange frank, honest opinions ... if they're worrying that someday it's going to show up in the paper or on some blog site," he said, noting that it could push communication "even further into private channels that are no longer FOIA'ble. And that's not good either."

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